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November 10, 2006

The Honorable William H. Pauley III
U.S. District Court for the Southern District of New York
500 Pearl Street, Chamber 2210
New York, NY 10007

Re: *Vargas, et al. v. Pfizer, et al.*,
Case No. 04-CV-9772

Dear Judge Pauley:

We write on behalf of the defendant BT in the above captioned case. Yesterday, plaintiffs filed a "Motion for Reconsideration" asking the Court to reconsider the Court's request at the November 3, 2006 summary judgment hearing that defendant BT obtain and provide the best evidence – evidence of independent creation of the drum track at issue in the case – to resolve the summary judgment motion. Defendant BT respectfully requests this Court to strike, *sui generis*, and without further briefing, the plaintiffs' "Motion for Reconsideration" for the reasons set forth below.

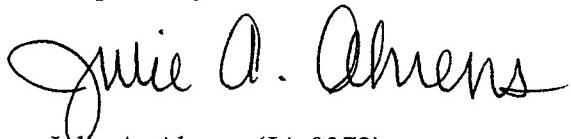
First, there is no authority that allows the plaintiffs to file a "Motion for Reconsideration" to request reconsideration of the Court's request for additional evidence. The Federal Rule of Civil Procedure and Local Rule under which plaintiffs file their Motion for Reconsideration apply to requests for reconsideration of only entered judgments. See Fed. R. Civ. P. 59(e); L.R. 6.3. Moreover, plaintiffs' counsel made the same arguments to the Court on November 3, 2006 as he does in his Motion for Reconsideration. The Court has heard these arguments before and presumably rejected them. Finally, the Court's request to defendant BT for additional evidence gave BT and his expert 30-days to gather the evidence (until December 1, 2006). This undertaking is already under way. A challenge of your Honor's request for additional evidence should not be heard when defendant has already begun fulfilling the request.

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For these reasons, defendant BT respectfully requests the Court to strike plaintiffs' Motion for Reconsideration.

Respectfully submitted,



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